

that religious communities 'can play a role in redressing past injustices and the reconstruction of society'. The declaration itself affirmed freedom of conscience – including the freedom of accepting or changing religious affiliation,<sup>12</sup> the equality of all religious communities before the law, and the rights to religious education, access to public media, recognition of systems of customary law, propagation of teachings and the observance of holy days.

A wide spectrum of Muslim organizations were present, the widest spectrum of Muslims ever to meet under one roof. 'It is ironic', commented a Muslim delegate, 'that it took an interfaith meeting to bring such diverse Muslim groups together, not even the National Muslim Conference had all those organizations represented' (*Al-Qalam*, November 1992, p. 3). Another delegate said: 'There was a common purpose in the Muslim delegation. We were there to level the playing field . . . For too long has a particular brand of one religion been officially favoured. Thus as Muslims we attempted to infuse as much of an Islamic world view as possible into the declaration . . . our objective was to make real gains for Muslims as a community in a post-apartheid South Africa' (ibid.). This historic exercise in grassroots religious consultation reflected the best in the democratic ethos, making words such as 'mandates', 'consultation', 'accountability' and 'transparency' an indispensable part of progressive political currency. Once again, even if unknowingly, the struggle for freedom was teaching religion a thing or two about human dignity and the need to involve people in the decisions which would affect their lives.

There were, however, two major problems in the composition of the Muslim delegations: there wasn't a single black person among the twenty-six present and there were only two women. It was the marginalization of women, reflected in the latter problem, which ensured that the co-operation achieved among the Muslims at the conference was going to be rather short-lived. The next phase of the South African *jihad* had begun: women, the other component of the *mustad'afun*, were now demanding their liberation.

## The Gender Jihad

There are several significant reasons for the prominent part that the struggle for gender equality plays in South Africa. As I showed in chapter 1, numerous groups inside South Africa had contributed to the struggle for freedom. Carrying their multiplicity of identities – Muslim, Rastafarian, feminist, coloured, trade unionist, liberal, gay, young per-

son, business person, conservative – the vast majority of South Africans were skilfully mobilized under various constituencies within the national democratic struggle, for the broader objective of the liberation struggle. The fact that many of these individuals were simultaneously organized at more than one level of identity meant that the other dimensions, with their own unique agendas, were seldom neglected, even if they were of little immediate consequence for the struggle. In the Call, for example, activists organized as Call members with a peculiarly Islamic agenda, which they nurtured in their meetings. This shaped their input at the second level, that of UDF-ANC activism. This was also the case with feminists, who recognized that, although women were oppressed as gendered beings, they were also part of a national liberation struggle in which very many did not appreciate the significance of the struggle for gender equality. Engaging in the struggle for national liberation, and invoking landmarks in that struggle, such as the march of thousands of women against the pass laws to the Union Buildings in Pretoria in August 1956, they used every opportunity to drive home the relationship between sexism and racism.

Secondly, the South African struggle had the immense advantage of a formidable international solidarity movement, the like of which no other political cause has known. The activists in these movements, largely based in North America and Europe, were essentially people who had identified racism as but one of a number of socio-ideological forces that they believed dehumanized people, and which had to be relentlessly opposed. Among the other such forces were consumerism, sexism, homophobia, the arms industry and the destruction of the environment. Freed from the concerns about the next meal for their own kids, they could actually think about the survival of the white rhino. While they did not place all of these concerns on the agenda of the numerous South African activists with whom they interacted, it was inevitable that the latter would be influenced and would even identify with the issues, which would otherwise have been seen as divisive or diversionary.

The Call has, since its inception, been committed to a radical challenging of the position of women in Islam and has consistently focused on the specificity of women's oppression and patriarchal relations within the family and society. The very first item under the heading 'What is our Line?' (i.e., ideological position) in the organization's information brochure is about women and states:

We believe in the equality of men and women and in the liberation of women from [jurisprudential] legacies pertaining to the period of Muslim decline. We believe that our country will never be free until

its women are also free from oppressive social norms. Women must focus on the rights being withheld from them today rather than basking in the knowledge that the Prophet Muhammad (PBUH) had in fact stipulated these rights. (Call of Islam 1984, p. 2)

The Call undertook a consistent critique of the traditionalist interpretation of the role of women in Islam and regularly denounced the fact that 'for far too long Muslim men have treated women as they treat their beards; the more control they have over women, the greater they judge their faith to be' (Call of Islam n.d., *Women Arise! The Qur'an Liberates You!*). In line with its own earlier reformist agenda, the MYM has also always been concerned, even if rather condescendingly in its early stages, with the religious marginalization of women.

In the period preceding the elections, and well thereafter, progressive Islam found a new focus for much of its activity and campaigns in the issue of gender discrimination. In fact, in the case of the Call, it may even be said that this was the single issue with which they have dealt independently of the short-term political demands of the liberation movement. The MYM, describing women as 'the most oppressed sector in South Africa', and arguing that 'Muslim women, despite the qur'anic position regarding the liberation of women are oppressed even within the Muslim community by Muslims themselves' (*Muslim Views*, August 1990, p. 11), initiated a number of programmes focusing on gender equality. This included the formation of a Gender Desk, the organizing of a number of seminars, courses and public conferences on the position of Muslim women, a rethinking of the *shari'ah* provisions regarding women and a campaign for women to pray in mosques.<sup>13</sup> A perusal of the contents of the Muslim newspapers and pamphlets after 2 February 1990 shows that, other than the more explicit political developments and the role of Muslims therein, gender equality was the single most debated issue.

Two major developments reflected all the tensions between the old and new South Africas and the fault lines between a principled progressive Islam: and a simplistically anti-apartheid Islam; the formation and collapse of the Muslim Personal Law Board (MPLB) and the controversy around the delivery of a sermon by a woman in the Claremont Main Road Mosque.

### Muslim Personal Law: Legitimizing the Illegitimate?

MPL had for long been a carrot dangled in front of Muslims to encourage them to become more fully a part of a particular political party's

agenda. Towards the end of 1985 the apartheid regime, through the South African Law Commission, called for proposals in this regard. These were, in varying degrees, entertained for discussion by the clerical bodies, the Islamic Council of South Africa and the Association of Muslim Attorneys and Lawyers. Given that these moves were initiated in the tricameral parliament, the Call and the MYM argued that MPL should never be used as a means of co-opting Muslims in their own oppression and protested at the lack of consultation with the community. At the National Conference of Muslims in May 1990 and during the election campaign in 1994 this emerged as the most significant demand of Muslims, and one to which Mandela personally promised to accede.

The apartheid regime never recognized Muslim marriages, other than for purposes of taxation, and all Muslims born from such unions were regarded as 'illegitimate'. While marriage and divorce are but one dimension of MPL,<sup>14</sup> it is understandable that the lack of recognition in this specific area should be viewed as particularly offensive. Furthermore, the chaotic and manifestly unjust way MPL was, and still is, administered led to widespread support for its regularization. 'Today', said Ebrahim Moosa,

we are saddled with a Muslim clergy whose obsession with the letter of the law – rather than its spirit – rendered . . . MPL redundant and obsolete. Instead of bringing about justice to parties concerned in personal law disputes, it has the opposite effect . . . An unscrupulous husband can for a paltry sum divorce his wife at the hands of an equally unscrupulous clergyman or marry another female to satisfy his hedonistic impulse (Moosa 1988b, p. 1)

Wives had no recourse to civil protection: in the event of a divorce the wife usually ended up without a roof over her head, even when the house was jointly purchased. When the husband died without leaving a will his parents and/or siblings were his only legal heirs. Nor were men under any legal obligation to provide maintenance to their former wives in the case of abandonment or divorce.

It is thus not surprising that many South African Muslims viewed the introduction of MPL as their share of the 'New South Africa cake'. Yet this cake contained some ingredients clearly incompatible with the traditional interpretations of MPL: non-sexism and guarantees of non-discrimination. For Muslims who had for long fought for the marginalized and the oppressed, to now succumb to interpretations of the *shari'ah* that perpetuated the subjugation of women, was tantamount to legitimizing the illegitimate.

The matter of both MPL and African Traditional Law had evoked considerable controversy in the multi-party talks that followed the breakdown of Codesa. The Congress of Traditional Leaders (Contralesa) demanded that customary law be excluded from a Bill of Rights and be exempt from the gender equality guarantee of the proposed Bill of Rights. Contralesa, furthermore, argued 'that communities subject to customary law and traditional authority (i.e., rural communities) should remain exclusively subject to such authority'. Muslim clerics, not unsurprisingly, indicated their support for these proposals 'in so far as it applies to Muslim women' (*Al-Qalam*, October 1993, p. 1). At the other side of the spectrum, one saw the tension between an indomitable belief in gender equality and an equally stubborn persistence, more accurately, a desperate hope, that this was compatible with the Qur'an. Acknowledging the need for customary and religious law to be recognized by civil law, Shamima Shaikh of the MYM, echoing the view of progressive Muslims throughout the country, nevertheless argued that customary or religious law 'cannot be exempted from the Bill of Rights and be allowed to perpetuate inequalities. To even consider excluding any sector of society from being covered by the Bill of Rights is an injustice and makes a mockery of the Bill' (ibid.). Fatimah Hujaij from the Call said that she recognized the absolute equality of men and women *as sanctioned by the Qur'an* (emphasis mine) and said that the Call had submitted to the multi-party talks 'that they recognize this right as sanctioned by the Qur'an . . . and not endorse these [Contralesa] recommendations as they deny women equality with men' (ibid.). Others showed a finer appreciation for the tensions inherent in MPL and the Bill of Rights. At a subsequent seminar Soraya Bosch pleaded for a review of Islamic law to bring it into line with the current transformation in South Africa. Ebrahim Moosa identified areas of these tensions and Rasool called for 'the mobilization and empowerment of Muslim women to ensure that they play a leading role in the implementation of MPL' (ibid., p. 4).

The MPL Board, initiated by a number of Muslim ANC Members of Parliament, was inaugurated in August 1994 with a fifteen-member executive committee consisting of clerics from a number of different organizations, including the MJC as well as representatives from the MYM and the Call. One of the Call's delegates and a Member of Parliament, Fatimah Hujaij, was elected as one of the vice-presidents in a reserved slot and Ebrahim Moosa as assistant secretary general. The very first meeting of the MPL Board after its inauguration laid bare all the tensions. One observer described it as a 'war zone' (*Al-Qalam*, March 1995,

p. 1), between progressive Islam and the conservative clerics. Much of the discussion centred around the agenda and procedure of the meeting itself, the question of mandates and representativeness and the structure of the board that ensured a veto for the clergy in all essential matters.

The secretary general of the MPL Board had, without authorization, made two submissions to the Constitutional Assembly on behalf of the board, calling for the establishment of *shari'ah* courts, the appointment of Muslim judges to the existing judiciary and for five clerical organizations to have the authority to decide on the dissolution of Muslim marriages. The most contentious submission though, was that MPL be exempt from constitutional challenge and the Bill of Rights. The Call and the MYM opposed both the process and the contents of the submission. They demanded structural changes, whereby the cleric organizations would not have effective sole control of the board and women would be represented in larger numbers (only six out of eighty members were women) and they pleaded for an end to the vilification of some board members by others. A few weeks later, a two-paragraph letter signed by its president, Nazim Mohammed, and the secretary general was received by all the board members, informing them of its dissolution in terms of a resolution signed by a majority of its membership. Moosa described the dissolution as 'a sign of cowardice and the inability of the alleged *'ulama'* groups to deal with the problems faced by SA Muslims' (ibid.).

The clerics had been for years reluctant openly to demand recognition by the apartheid state and felt that their time, too, had arrived. With the introduction of MPL, to be administered by them, they would be accorded a much-longed-for legal authority role. With issues such as the husband's right to unilateral divorce, polygamy, and gender differentiated or discriminatory inheritance to be decided by an all-male clergy, the progressive Muslims argued that the clergy's project was simply about the further disempowerment of victims (women) and the legal empowerment of male authority.

With the MPL Board up in smoke, the disparate Muslim forces were free to argue their own positions in discussions with the Minister of Justice and proposals to the Constitutional Assembly. The way the wind was blowing became evident at a hearing before a sub-committee of the Constitutional Assembly in May 1995, attended by nearly two hundred religious leaders and academics. The chair, Fatimah Hujaij, an ANC MP from the Call, opened the hearings by inviting proposals and arguments on gender, religion and morality 'which are consistent with other aspects of the constitution'. As one of the Muslims who addressed the session, I

argued against the elevation of any cultural or religious community and its traditions over that of another by exempting their laws from the Bill of Rights: 'Should the state advantage one group over another, including religious over non-religious, then it would violate the ethos of justice which brought it into being' (*Al-Qalam*, May 1995). Even the official MJC speaker, in a clear departure from his organization's position, argued for MPL 'which was consistent with women's rights' (*ibid.*). Virtually all of the Muslim interventions from the floor argued for the subjection of MPL to the proposed Bill of Rights. Shoaib Omar, secretary of the defunct MPL Board and the legal expert of conservative Islam in South Africa, intervened once to take issue with Ebrahim Moosa's pleas for 'moral pluralism'. After the lunch break most of the conservative clerics failed to return.

In October 1996, the Constitutional Assembly adopted the final draft of the country's constitution. Not only did all the equality clauses survive the onslaughts of hundreds of thousands of petitions and numerous marches, but they emerged extended and even more firmly entrenched in two significant ways. Firstly, while the equality clause in the Interim Constitution only had a vertical effect, i.e., between the state and its citizens, it was now extended to the horizontal level, where all persons, private companies and employees were also compelled to uphold these rights. Secondly, in the Interim Constitution, legislation recognizing systems of religious personal and family law was insulated from challenge under the Bill of Rights. Section 9 of the final draft, which reads as follows, undermines this caveat so thoroughly as to render it meaningless:

1. Everyone is equal before the law and has the right to equal protection and benefit of the law.
2. Equality includes the full and equal enjoyment of all rights and freedoms. To promote the achievement of equality, legislative and other measures designed to protect or advance persons, who are disadvantaged by unfair discrimination may be taken.
3. The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.
4. No other person may unfairly discriminate directly or indirectly against anyone on one or more grounds in terms of subsection 3.
5. Discrimination on one or more grounds listed in subsection 3 is unfair unless it is established that the discrimination is fair.

## Women: The Day Coming Down Meant Going Up!

Amina Wadud-Muhsin, an eminent Muslim academic and theologian from the USA, was in South Africa to attend an international conference on 'Islam and Civil Society'. On Friday, 11 August 1994 she took to the rostrum in front of the pulpit at the Claremont Main Road Mosque and delivered what was, for all intent and purpose, a sermon. While several women had, in fact, previously addressed men in mosques in South Africa, this was the first time that it was on the occasion of the congregational prayers on a Friday. Although it preceded the more formal ritual of a rehearsed Arabic sermon, in the religious *imaginaire* of Muslims it was every bit as significant as the sermon itself.<sup>15</sup> The mosque was packed and the mood, rather than curious, was euphoric and celebratory. The women, many clad in black with only their faces and hands exposed, had until that day usually worshipped upstairs. Now they came down, sat in space normally reserved for men, separated by a piece of rope, and never went back again.<sup>16</sup>

More committed to consciously transforming gender roles in the community rather than seeking publicity and conscious of the major rupture with tradition, the organizers perhaps deliberately downplayed the significance of the event by insisting that it was 'only a pre-sermon lecture'. The extent of this rupture was, however, clearly recognized by the MJC and its supporters. The following Friday a large crowd gathered at the nearby *al-Jamiah* Mosque in Stegmann Road from where they marched to the Main Road Mosque. Here, after some of them had had their firearms discovered by newly installed metal detectors and had been disarmed, one of the leaders was invited to give a talk on their opposition to a woman speaking at a mosque. Without further incident they returned to the Stegmann Road Mosque, where the congregational prayers were being delayed. In February 1995 a crowd of a few hundred, led by the chair of the MJC, Ebrahim Gabriels, made a violent but unsuccessful attempt to disrupt the Annual General Meeting of the mosque and to unseat the *imam* and the mosque committee. Amid the brandishing of firearms and the assaulting of several female members of the congregation, the situation returned to calm after it had been agreed that all protesters would be able to apply for membership of the mosque and, if accepted, allowed unhindered participation in the following AGM.

This abortive attempt to take control of the Claremont Main Road Mosque led to another huge controversy in the community, all of it dutifully reported in the local and national press. In response to several death



threats, the *imam* of the mosque (and national vice-president of WCRP), 'Abdul Rashied Omar, said: 'These threats are not new, we can deal with it much better now after going through the anti-apartheid struggle. [For us] the liberation struggle includes the issues of race, class and gender' (*Al-Qalam*, August 1994, p. 2)

The MJC, not wanting to be seen as the key instigators of the violence against what was widely regarded as a human rights issue in the new South Africa, initiated a short-lived Forum of Muslim Theologians to wage its battles against 'mosques that wanted to allow women to address congregations in the mosque' (*ibid.*). The Claremont Main Road Mosque, keen to elicit the support of as many non-congregants as possible, launched the equally short-lived Campaign Against Religious Intolerance, which I spearheaded.

In what is clearly reflective of the mosque's commitment to a comprehensive sense of justice towards the demonized Other, the following months saw more women and Christian clerics addressing the Friday congregation. By far the most moving initiative, though, was the address of an HIV positive Muslim woman from Singapore. Sitty Dhiffy, a young mother, contracted the disease from her husband in 1991 and since then both he and her eighteen-month-old son have died.

We must acknowledge that HIV and Aids infect everybody and is no longer considered only a gay disease. I and my other Muslim friends need support from our own Muslim community. We cannot survive alone. The Muslim community must talk about Aids. Aids is just another disease like cancer. We must help people get rid of this social stigma. Let us talk about oppression, love, happiness and discrimination. We need to put aside our own personal judgements and just open our eyes and our hearts (Dhiffy 1995, p. 2)

Many of us wept openly, for Sitty, for our own ignorance, for the many Muslims who cling to their own prejudices and their yearnings for control, for those who are so terrified of shedding their negative images of the Other – images that succeed not only in blocking out the Other but also in imprisoning the Self. Ebrahim Rasool spoke for the entire congregation in his response to Dhiffy's talk, saying:

Aids knows no colour, gender, sex, religion or age and there had to be Muslims willing to brave the tide of bigotry to reach out to those who also had a right to the infinite mercy of Allah . . . Muslims have to be a lot more introspective on the question of Aids. Creating external enemies to justify the sores within our own community was

not the way to cope with Aids. We have to recognize our own faults and in doing so become infinitely more human to those vulnerable and marginalized around us. (*Muslim Views*, December 1995, p. 3)

Nazim Mohammed, president of the MJC, in his denunciation on radio of the Wadud-Muhsin sermon was correct when he argued that the debate on women speaking in mosques was connected to similar debates in Christianity and Judaism. The conservative clerics have clearly recognized the implicit and unstated objectives of the progressive Muslims: women officiating in all worship ceremonies in mosques as an intrinsic part of human rights and gender equality. 'Where will it all lead?', the conservatives ask and point to the West where 'moral chaos reigns' in Other religion. The progressives have hitherto avoided this question and just point to the 'inherently immoral nature of gender discrimination'.

Far more significant than the interreligious connection in this debate, though, is the South African 'struggle' connection. Organizations such as the Call and the MYM have been deeply committed to the struggle against apartheid and have been very active in the many debates that have shaped our country's Bill of Rights and its constitution. Alongside most of the progressive forces in the country, they have made the connection between the struggle against the dehumanization of racialism and that of gender oppression. The struggle has, furthermore, taught them that people's humanity is in large measure given meaning to the extent that they, especially the marginalized, are empowered and, on the other hand, the powerful, even the religious ones, are disempowered.

## Conclusion: Progressive Islam Imprisoned in a Mosque?

A seemingly trivial incident during the course of the board's second and last meeting captured all the tensions between not only the approach of conservative Islam and progressive Islam, but also between a simplistic anti-apartheid religious rhetoric and a principled progressive commitment to oppose all forms of discrimination. Nazim Mohammed, formerly a patron of the UDF, leader of the MJC and chair of the meeting, who takes much pride in his putative stands against apartheid, announced 'a presidential decree' that women without headscarves would not be allowed into the meeting. In the first place, while a number of Muslim clerics were, in varying degrees, supportive of the liberation struggle, they clearly understood liberation in a rather simplistic sense, as